

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

In re: Testosterone Replacement) Case No. 14 C 1748
Therapy Products Liability Litigation) MDL 2545

This document relates to all cases

CASE MANAGEMENT ORDER NO. 6

(Plaintiffs' Leadership)

In accordance with Corrected MDL Case Management Order No. 4 entered August 1, 2014 (Docket No. 244) ("CMO No. 4"), and the Court having carefully reviewed the submissions of the parties, it is hereby **ORDERED** that the attorneys designated herein shall serve as Plaintiffs' co-lead counsel, executive committee, steering committee and co-liaison counsel (collectively, the "Plaintiffs' Leadership") and shall have the responsibilities described below.

A. Appointment of Plaintiffs' Leadership

1. ***Plaintiffs' Co-Lead Counsel.*** As set forth in CMO No. 4, the Court has appointed the following three attorneys to serve as Plaintiffs' Co-Lead Counsel for a one-year term expiring on August 15, 2015, with the opportunity to apply for reappointment:

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2. Plaintiffs' Executive Committee. As set forth in CMO No. 4, the Court has appointed the following seven attorneys to serve together with Plaintiffs' Co-Lead Counsel as the members of the Plaintiffs' Executive Committee (the "PEC") for a one-year term expiring on August 15, 2015, with the opportunity to apply for reappointment:

Michael London (Chairperson
of the PEC)
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3. Plaintiffs' Steering Committee. As set forth in CMO No. 4, the Court has appointed the following 21 attorneys together with Plaintiffs' Co-Lead Counsel and the PEC to serve as the members of the Plaintiffs' Steering Committee (the "PSC") for a one-year term expiring on August 15, 2015, with the opportunity to apply for reappointment:

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4. Plaintiffs' Co-Liaison Counsel. As set forth in CMO No. 4, the Court has appointed the following two attorneys to serve as Plaintiffs' Co-Liaison Counsel for a one-year term expiring on August 15, 2015, with the opportunity to apply for reappointment:

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B. Responsibilities of Plaintiffs' Leadership

1. Responsibilities of Plaintiffs' Co-Lead Counsel. In consultation with the PEC, Plaintiffs' Co-Lead Counsel shall be generally responsible for coordinating the activities of Plaintiffs in conducting this litigation toward final resolution. Plaintiffs' Co-Lead Counsel shall take the lead in litigating these matters on behalf of all Plaintiffs, meaning that they shall play the lead role in making strategic, tactical, and procedural

decisions on behalf of the Plaintiffs' counsel and *pro se* Plaintiffs. Of course, the Court recognizes that all Plaintiffs' counsel and all Plaintiffs retain the right to choose to act in their own best interest in these proceedings, but the large number of attorneys and Plaintiffs requires a substantial amount of coordination of litigation efforts. To that end, Plaintiffs' Co-Lead Counsel – either personally or by coordinating the efforts of others – shall perform the following duties, among others:

Discovery

- a. Initiate, coordinate and conduct all generic pretrial discovery on behalf of all Plaintiffs who file civil actions in this Court or that are transferred to this Court pursuant to 28 U.S.C. § 1407 and that are consolidated with this multidistrict litigation;
- b. Develop and propose to the Court schedules for the conduct and completion of all discovery on behalf of all Plaintiffs;
- c. Initiate, coordinate, and cause to be issued in the name of all Plaintiffs, the necessary discovery requests, motions, and subpoenas pertaining to any witness and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation (similar requests, notices, subpoenas may be caused to be issued by Plaintiffs' Co-Lead Counsel upon written request by an individual attorney in order to assist him or her in preparation of the pretrial stages of his or her client's particular claims);

- d. Identify witnesses to be noticed for deposition, schedule witness depositions and determine the lead examiner(s) for each noticed deposition;
- e. Conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all Plaintiffs;

Motion Practice and Hearings

- f. Submit any motions presented to the Court on behalf of all Plaintiffs as well as oppose, as appropriate, any motions submitted by the Defendants or third parties;
- g. Examine or designate other counsel to examine witnesses and introduce evidence at hearings on behalf of Plaintiffs;
- h. Act or designate other counsel to act as spokesperson(s) for Plaintiffs at pretrial proceedings and in response to any inquiries by the Court;

Contact with Defense Counsel

- i. Initiate, coordinate and conduct the requisite meet and confers with Defendants, confer with Defendants regarding procedural matters, and negotiate and enter into stipulations and case management orders with Defendants regarding this litigation;
- j. Explore or designate other counsel to explore, develop, and pursue settlement options with Defendants on behalf of Plaintiffs;

Oversight of Plaintiffs' Counsel

- k. Call meetings of Plaintiffs' counsel for any appropriate purpose;

- I. Assign litigation-related tasks to Plaintiffs' counsel who communicate their willingness to work for the common benefit of all Plaintiffs, taking into consideration the particular strengths and weaknesses of counsel requesting such assignments;
- m. Monitor the activities of the PEC, PSC and other co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;

Committee Formation

- n. Plaintiffs' Co-Lead Counsel shall have the power to form committees and appoint committee chairs for specific litigation tasks, including but not limited to the following: (i) Discovery; (ii) Law and Briefing; (iii) Science/Experts; (iv) Trial; and (v) others as the need may arise;

Trial Preparation

- o. Coordinate trial team(s)'s selection, management and presentation of any "bellwether" and/or "test" case trial(s); and

Other

- p. Perform such other duties as may be incidental to proper coordination of Plaintiffs' activities or authorized by further order of the Court.

2. ***Communications with the Court:*** All communications from Plaintiffs with the Court should be through Plaintiffs' Co-Lead Counsel or Co-Liaison Counsel. If circumstances require direct correspondence with the Court by an individual counsel,

copies of any said communications shall simultaneously be served upon all three Plaintiffs' Co-Lead Counsel and both Co-Liaison Counsel by email.

3. ***Responsibilities of Plaintiffs' Executive Committee.*** The PEC shall from time to time consult with Plaintiffs' Co-Lead Counsel, the PSC and Co-Liaison Counsel in coordinating the Plaintiffs' pretrial activities and in planning for trial.

4. ***Responsibilities of Plaintiffs' Steering Committee.*** The members of the PSC shall consult with Plaintiffs' Co-Lead Lead, the PEC and Co-Liaison Counsel in coordinating the Plaintiffs' pretrial activities and in planning for trial. The PSC shall be authorized to perform work only based upon assignments received from Plaintiffs' Co-Lead Counsel (or their designees), or a committee chairperson appointed by Plaintiffs' Co-Lead Counsel.

5. ***Responsibilities of Plaintiffs' Co-Liaison Counsel.*** Plaintiffs' liaison counsel shall:

- a. Receive and, as appropriate, distribute to co-counsel orders from the Court and documents from opposing parties and counsel;
- b. Coordinate service and filings for Plaintiffs;
- c. Maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;
- d. Act as Plaintiffs' treasurer for any common benefit fund and/or assessments;
- e. Maintain and make available to all Plaintiffs' counsel of record at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository); and

f. Carry out such other duties as the Court may Order.

6. ***Common Benefit Time and Expenses.*** Plaintiffs' Co-Lead Counsel shall prepare and submit to the Court a proposal for the authorization by Co-Lead Counsel and the PEC of common benefit time and expenses and the standards and procedures to be used by any counsel seeking fees and expenses in this case.

7. ***Privileges Preserved.*** The Court recognizes that cooperation by and among Plaintiffs' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between Plaintiffs' counsel shall not be deemed a waiver of any privilege or protection, including without limitation the attorney-client privilege and/or the work product doctrine, if the privilege or protection is otherwise applicable. The cooperative efforts contemplated above shall in no way be used against any Plaintiff by any Defendant. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

It is so ordered.



MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE

Date: August 13, 2014